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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Engineering & Professional Services, Inc.
File: B-224622
Date: November 17, 1986

DIGEST

1. Contracting agency properly may award a contract to a higher-priced, higher-rated offeror where the solicitation specifically states that the government's primary concern is the offeror's technical and management capabilities and the agency reasonably concludes that the technical and management advantages of the awardee's offer are significant enough to offset the lower evaluated cost of the protester's proposal.
2. An agency is not required to discount a competitive advantage that might accrue to an offeror by virtue of incumbency so long as the advantage did not result from preferential treatment or other unfair government action.
3. A protester has the burden of proving bias, and unfair or prejudicial motives will not be attributed to procurement officials on the basis of inference or supposition.

DECISION

Engineering & Professional Services, Inc. (EPS), protests the award of a cost-plus-fixed-fee contract to Calculon Operating Services Corporation (Calculon) under request for proposals (RFP) No. DAAB07-86-R-E003, issued by the Department of the Army for engineering and technical fire support services for the Army's Advanced Field Artillery Tactical Data Systems. EPS contends that it should have received the award because it was the low evaluated offeror and its technical proposal was rated acceptable by the Army. We deny the protest.

The RFP provided that award would be made to the offeror having the best overall proposal, and that the technical evaluation factors were more important than the management and cost factors combined, with the management factors themselves being more important than cost. The solicitation further specified that to receive consideration for award, an offeror had to have a rating of no less than acceptable in

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each of these evaluation areas. With regard to cost, the RFP stated that although this factor was less important than technical or management, it would be the determining factor among offerors whose proposals otherwise were rated equally acceptable.

The Army received proposals from four offerors in response to the RFP. Three offerors were found to have acceptable proposals and were placed in the competitive range. Following oral discussions, each of the offerors was requested to submit a best and final offer.

After the evaluations of the best and final offers, Calculon was rated superior under both the technical and management factors; EPS and the other offeror's ratings for both of these evaluation categories were acceptable. EPS proposed the low evaluated cost at \$13,139,212, while Calculon's evaluated cost was second low at \$14,239,749. The Army determined that the technical and management superiority of Calculon's proposal outweighed the cost difference between the two proposals, and awarded the contract to Calculon as having the best overall proposal.

EPS essentially contends that the Army's determination that the firm proposed to do an acceptable job, and the fact that EPS's evaluated price was low, are enough to mandate award to the firm. EPS also suggests that the Army should have taken into account that the difference in technical merit between its proposal and Calculon's probably was due solely to the fact that Calculon was the incumbent contractor, rather than to any actual technical superiority on the part of Calculon. As an example, EPS notes that the evaluation materials state EPS's best and final proposal was found to be weak regarding sample task no. 4--staffing plan (performance of four sample tasks was a subfactor of the technical evaluation factor) for "lack of in-depth discussion of staffing plan due to lack of detail of" the Field Artillery Tactical Data Systems on-going activities; the protester suggests that Calculon probably did better in sample task no. 4 because as the incumbent the firm had the needed detailed knowledge. EPS asserts that if the advantage of incumbency is discounted from the ratings given Calculon, both proposals were essentially equal so that cost should have been the determining factor.

Finally, EPS charges that the Army acted improperly in assigning officials who worked with these artillery data systems to evaluate the proposals. EPS emphasizes that these officials are from the same office that has worked with Calculon for the past 5 years.

We find no basis for questioning the Army's cost/technical trade-off in selecting Calculon's higher-rated offer as the more advantageous to the government. As recognized by EPS, the RFP specifically provided that technical considerations were more important than management and cost combined, and Calculon's technical rating was superior, compared to EPS's rating of acceptable. Further, Calculon received a superior rating--as opposed to EPS's acceptable rating--for management, which under the RFP's evaluation scheme itself was more important than cost. EPS does not contest the evaluation of its offer, and we will not object to a contracting agency awarding a contract to other than the lowest cost offeror if, as here, the RFP so provides and the agency's decision is not shown to be unreasonable or inconsistent with the established evaluation scheme. Consolidated Group, B-220050, Jan. 9, 1986, 86-1 C.P.D. ¶ 21. In this respect, we note the evaluated cost difference between the two offers represents less than 8 percent of the value of the contract awarded to Calculon.

With regard to EPS's argument that its proposal was essentially equal to Calculon's except for the advantage Calculon had because of its incumbency, we note that although Calculon indeed was rated superior for sample task no. 4--the evaluation element EPS argues supports its position--the record, however, shows that the rating properly was based on Calculon's actual proposal as opposed to on a presumption of ability not otherwise reflected in the offer. The record further shows that, in any event, EPS in fact was rated higher than Calculon on another sample task, and that both offerors received the same overall rating of acceptable under the sample task subfactor.

Calculon's proposal was found to have an "excellent appreciation of the required engineering approach to satisfy [the Army's] unique requirements" and displayed "superb detail and documentation throughout." We fail to understand why this should be ignored or discounted just because of the advantage Calculon gained by reason of its incumbency; the fact remains that Calculon's proposal was superior. A competitive advantage accruing to an offeror because of its position as the incumbent need not be discounted or equalized in favor of the other offerors so long as it does not result from preferential treatment or other unfair action by the government. See Halifax Engineering, Inc., B-219178.2, Sept. 30, 1985, 85-2 C.P.D. ¶ 559. Although Calculon, by virtue of its incumbency, may have been able to prepare a better proposal than EPS, from our review of the record we find no preferential treatment or unfair action on the Army's part.

Turning to EPS's objection that officials from the office that worked with Calculon for the last 5 years also evaluated the offerors' proposals, EPS has not alleged that there was actual bias in the evaluation. The protester has the burden of proving bias, not merely the appearance of it, and unfair or prejudicial motives will not be attributed to procurement officials on the basis of inference or supposition. See Martin-Misser Associates, B-208147, Apr. 8, 1983, 83-1 C.P.D. ¶ 373.

The protest is denied.

for Seymour Efron
Harry R. Van Cleave
General Counsel